**Objection Deadline: February 7, 2011 at 4:00 p.m. (ET)**
**Hearing Date and Time: February 15, 2011 at 2:00 p.m. (ET)**

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**UNITED STATES BANKRUPTCY COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| DBSD NORTH AMERICA, INC., *et al.*,[1] | ) | Case No. 09-13061 (REG) |
| Debtors. | ) | Jointly Administered |

**NOTICE OF FILING OF DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING THE INVESTMENT AGREEMENT**

PLEASE TAKE NOTICE that on February 1, 2011, the above-captioned debtors (collectively, the "**Debtors**") filed the Debtors' Motion for Entry of an Order Authorizing and Approving the Investment Agreement (the "**Motion**").

[1] The debtors in these chapter 11 cases, together with the last four digits of each debtor's federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (4288); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

PLEASE TAKE FURTHER NOTICE that a hearing (the "**Hearing**") on the Motion will be held before the Honorable Robert E. Gerber, United States Bankruptcy Judge, in Courtroom No. 621 of the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, on **February 15, 2011 at 2:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, shall conform to the Bankruptcy Rules and the Local Rules, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon (a) the Debtors and their counsel, (b) the Office of the United States Trustee for the Southern District of New York, (c) counsel to the official committee of unsecured creditors, (d) counsel to DISH Network Corporation, (e) counsel to the ad hoc committee of Senior Noteholders, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, and (h) the parties in interest who have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002, so as to be actually received **no later than February 7, 2011 at 4:00 p.m. (prevailing Eastern Time)**. Only those responses that are timely filed, served and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the relief requested in the Motion as requested by the Debtors.

New York, New York
Dated: February 1, 2011

/s/ *Ryan Blaine Bennett*

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**UNITED STATES BANKRUPTCY COURT**
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| In re: | ) | Chapter 11 |
| DBSD NORTH AMERICA, INC., *et al.*,[1] | ) | Case No. 09-13061 (REG) |
| Debtors. | ) | Jointly Administered |

**DEBTORS' MOTION FOR ENTRY OF AN ORDER**
**AUTHORIZING AND APPROVING THE INVESTMENT AGREEMENT**

[1] The debtors in these chapter 11 cases, together with the last four digits of each debtor's federal tax identification number, are: DBSD North America, Inc. (6404); 3421554 Canada Inc. (4288); DBSD Satellite Management, LLC (3242); DBSD Satellite North America Limited (6400); DBSD Satellite Services G.P. (0437); DBSD Satellite Services Limited (8189); DBSD Services Limited (0168); New DBSD Satellite Services G.P. (4044); and SSG UK Limited (6399). The service address for each of the Debtors is 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190.

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The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") hereby move this Court, pursuant to this motion (the "**Motion**"), for the entry of an order (the "**Order**"), substantially in the form attached hereto as **Exhibit A**, authorizing and approving the Debtors' entry into the Investment Agreement (as defined herein). The Investment Agreement is attached hereto as **Exhibit B**.[2] In support of this Motion, the Debtors respectfully state as follows.

## Preliminary Statement

1. As debtors in possession, the Debtors in these chapter 11 cases are fundamentally charged, at all stages during the chapter 11 process, with identifying, analyzing, and where appropriate, pursuing value maximizing opportunities. Such an opportunity has presented itself. Indeed, shortly after the January 13 status conference before this Court (the "**Status Hearing**"), DISH Network Corporation ("**DISH**") approached the Debtors with a new and definitive investment proposal (the "**Alternate Plan**"), whereby DISH would provide approximately $1 billion of value under the Alternate Plan and would receive 100% of the equity of the reorganized Debtors, pay the Senior Notes[3] claims in full, plus accrued interest, and provide an enhanced and cash recovery for the Debtors' unsecured creditors. Indeed, the Alternate Plan values the Debtors at more than 150% of the valuation provided under the Debtors' currently pending chapter 11 plan (as modified, the "**Modified Plan**"). The Alternate Plan further represents an opportunity for the Debtors to partner with an established participant in the satellite

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[2] The Company Disclosure Letter to the Investment Agreement is attached hereto as **Exhibit C**.

[3] "**Senior Notes**" means those 7.5% Convertible Senior Secured Notes due 2009, issued under that certain indenture dated August 15, 2005, as supplemented and amended, among DBSD N.A., the guarantors named therein, and The Bank of New York Mellon (f/k/a The Bank of New York), as trustee, pursuant to which DBSD N.A. issued the 7.5% Convertible Senior Secured Notes due 2009.

telecommunications space with the resources to fund the Debtors' business plan and ensure post-emergence viability going forward.

2. To expedite and support the implementation of the Alternate Plan, the Debtors and DISH have agreed to enter into the Investment Agreement. In return for 100% of the equity in the reorganized Debtors, DISH will cancel its Prepetition Facility Claims[4] and provide the additional cash to fund consummation of the Alternate Plan.

3. Although the financial aspects of the Alternate Plan are, themselves, reason enough to approve the Debtors' entry into and performance under the Investment Agreement, the non-financial aspects are equally compelling. The Debtors—believing that they could obtain confirmation of the Modified Plan, but also recognizing that the Alternate Plan, if consummated, would maximize the value of their estates—extensively negotiated the Investment Agreement to assure that DISH was dedicated to the transaction. In that regard, the Investment Agreement does not permit DISH to walk away from the deal on a whim. Rather, DISH is only permitted to terminate the Investment Agreement upon the occurrence of a few enumerated events of default (including the Debtors' receipt of a superior proposal). Moreover, in the event that the Investment Agreement is terminated as a result of certain events, such as the failure by DISH to obtain Federal Communications Commission ("**FCC**") approval of the license transfers contemplated in the Investment Agreement by a certain date (or at all), DISH is required to pay the Debtors' estates a $25 million reverse break-up fee. Finally, although the Investment Agreement does contain a "no-shop" provision, the Investment Agreement also includes a broad

[4] "**Prepetition Facility Claims**" means those claims derived from or based upon that certain $40 million working capital facility entered into pursuant to that certain Amended and Restated Revolving Credit Agreement, dated as of April 7, 2008, by and among DBSD N.A., as borrower, each of DBSD N.A.'s subsidiaries, as guarantors, Wells Fargo Bank, N.A., as successor administrative agent, the financial institutions and other persons from time to time lenders party thereto, and The Bank of New York Mellon (f/k/a The Bank of New York), as collateral agent (the "**Prepetition Credit Agreement**").

"fiduciary out," which permits the Debtors to terminate the Investment Agreement and move forward with a competing proposal that the Debtors believe, in the exercise of their fiduciary duties to their estates and stakeholders, is superior to that contemplated by the Investment Agreement and the Alternate Plan.

4. In connection with the Alternate Plan, DISH has agreed to extend replacement postpetition financing of up to $87.5 million on a non-priming and junior secured basis (the "**Replacement DIP Facility**") that will allow the Debtors to pay off their existing debtor in possession financing facility in full (the "**Existing DIP Facility**") and fund going-forward working capital and administrative expenses.[5] The extraordinarily favorable terms of the Replacement DIP Facility demonstrate DISH's commitment to consummate the Alternate Plan, and will provide benefits to the Debtors' estates immediately. Not only is the Replacement DIP Facility being offered on a ***non-priming*** basis, but it boasts a maximum 14-month term and includes grace periods following events of default that are of sufficient duration to provide the Debtors with ample opportunity to refinance the Replacement DIP Facility should it become necessary or desirable to do so.

5. The Debtors and DISH currently contemplate that the Alternate Plan will pay the Holders of the Debtors' Senior Notes (collectively, the "**Senior Noteholders**") in cash in full with accrued interest and provide for generous cash distributions to all general unsecured creditors. The Debtors, therefore, believe that their pursuit of the Alternate Plan represents their best opportunity to maximize value for their creditors and is, therefore, consistent with their fiduciary duties. The Alternate Plan represents the Debtors' best option to maximize value for

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[5] Contemporaneously with the filing of this Motion, the Debtors filed the *Debtors' Motion for Entry of an Order (A) Authorizing the Debtors to Obtain Replacement Postpetition Financing On a Third Lien, Secured, and Superpriority Basis and (B) Granting Related Relief.*

all of their stakeholders based on the size of the distributions, preserve the Debtors' ability to emerge from chapter 11, and, perhaps most importantly, provide the Debtors with the well-capitalized strategic partner that they need to implement their business plan. Accordingly, the Debtors request that the Court approve their entry into, and performance under, the Investment Agreement.

## Jurisdiction

6. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory bases for the relief requested herein are sections 105 and 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

## Background

9. On November 23, 2009, approximately six months after the Chapter 11 Cases were filed, this Court entered an order (the "**Confirmation Order**") confirming the Debtor's plan of reorganization (the "**Original Plan**"). Sprint Nextel Corporation ("**Sprint**") and DISH appealed the Confirmation Order to the United States District Court for the Southern District of New York (the "**District Court**") on numerous grounds. On March 24, 2010, after full briefing and oral argument, the District Court entered an order affirming the Confirmation Order (the "**District Court Order**"). Sprint and DISH subsequently appealed the District Court Order to the United States Court of Appeals for the Second Circuit (the "**Second Circuit**") (collectively, the "**Appeals**").

10. On September 29, 2010, the FCC authorized the Debtors to transfer certain communications licenses upon consummation of the Original Plan, thereby clearing the way for

the Debtors to consummate the Original Plan, but, on October 5, 2010, after emergency briefing by the parties, the Second Circuit entered an order staying consummation of the Original Plan pending the outcome of the Appeals (the "**Stay Order**").

11. On December 7, 2010, the Second Circuit entered an order: (a) reversing the Confirmation Order in part, on grounds that certain provisions of the Original Plan violate the absolute priority rule; (b) remanding the Appeals to the District Court for further remand to this Court; and (c) vacating the Stay Order. The Second Circuit order also indicated that it would issue an opinion in due course.

12. On January 6, 2011, the Debtors filed the Modified Plan, which revised the Original Plan in anticipation of the Second Circuit's opinion, along with the Modified Plan Motion[6] which sought (a) approval of the Modified Plan without the need for further solicitation and (b) application of the findings of fact and conclusions of law contained in the Confirmation Order to the Modified Plan to the maximum extent permissible.

13. On January 13, 2011, the Bankruptcy Court held the Status Hearing, at which the Debtors and their constituents discussed, among other issues, the anticipated Second Circuit opinion and the effect that the lack of a mandate from the Second Circuit has on the Bankruptcy Court's jurisdiction to act on the Original Plan, including by moving forward with the Modified Plan, the appropriate briefing and hearing schedule for the Modified Plan Motion, and the Debtors' increasingly perilous cash position.

14. Following the Status Hearing, the Debtors received a proposal from DISH to provide a substantial new money investment in exchange for 100% of the equity in the

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[6] "**Modified Plan Motion**" means the *Debtors' Motion for Entry of an Order (I) Approving Immaterial Modifications to the Debtors' Second Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code Without Need for Further Solicitation of Votes; and (II) Amending the Confirmation Order to Conform with and Apply to Such Modified Plan* [Docket No. 878].

reorganized Debtors as contemplated by the Investment Agreement and to provide replacement DIP financing under the Replacement DIP Facility, subject to the Court's approval of the Investment Agreement. After extensive discussions with their advisors and constituents and good faith, arm's length negotiations with DISH, the Debtors reached an agreement as to the key terms of the DISH-sponsored Alternate Plan, which, if confirmed and consummated, the Debtors believe is in the best interest of their creditors and other stakeholders.

## **The Investment Agreement**

15. As described above, the Debtors have agreed to terms with DISH regarding its acquisition of the Debtors through its sponsorship of the Alternate Plan. These negotiations culminated in the execution of that certain Investment Agreement dated as of February 1, 2011, by and among DBSD North America, Inc. and DISH (the "**Investment Agreement**"), attached hereto as **Exhibit B**.

16. The Investment Agreement sets forth the terms and conditions upon which DISH will acquire 100% of the equity interests in the reorganized Debtors through the Alternate Plan. *See* Ex. B. The Investment Agreement also provides that within the earlier of (a) two business days after the Court enters an order confirming the Alternate Plan or 21 calendar days after the execution date of the Investment Agreement, DISH will file all notices, applications, and requests for approval relating to the transactions contemplated by the Alternate Plan that are required to be filed with the FCC. *See id.* at § 4.04.

17. Further, the Investment Agreement sets forth certain timeframes associated with the chapter 11 cases, requiring the Debtors to file certain pleadings in a form and substance satisfactory to DISH, including: (a) no later than 48 hours after the execution of the Investment Agreement, motions seeking entry of orders approving the Investment Agreement and the Replacement DIP Facility; and (b) no later than February 28, 2011, the Alternate Plan and

accompanying disclosure statement (unless the Court determines that no disclosure statement is needed). *See id.* at § 4.12**.**

18. Finally, the Investment Agreement provides that, in the event the Debtors' receive an unsolicited, bona fide proposal that the Debtors determine, in good faith and after consultation with their outside legal counsel and independent financial advisors, to be (a) more favorable from a financial point of view to the Debtors' constituents than would be obtained through the consummation of the Alternate Plan and (b) reasonably capable of being completed taking into account all financial, regulatory, legal, and other aspects of such proposal, the Debtors may pursue such a proposal in furtherance of their fiduciary duties. *See id.* at § 4.02.

19. The following chart provides a summary of the proposed material terms of the Investment Agreement.[7]

| **Purchase and Sale of Shares** | |
|---|---|
| **Investment Agreement § 1.01** | On the terms and subject to the conditions set forth in the Investment Agreement, at the Closing, the Reorganized Company will issue, sell and deliver to Investor, and Investor will purchase and receive from the Reorganized Company, 10,000 shares (the "**Shares**") of the common stock, par value $0.01 per share of the Reorganized Company (the "**Common Stock**") for an aggregate purchase price equal to (a) cash sufficient to (i) satisfy claims (including interest accrued and unpaid through Closing in accordance with the terms therein) under those 7.5% Convertible Senior Secured Notes due 2009 (the "**Notes**"), issued under that certain indenture dated August 15, 2005, as supplemented and amended, among the Company, the guarantors named therein, and The Bank of New York Mellon (f/k/a The Bank of New York), as trustee (the "**Note Indenture**"), (ii) repay in full all of the Company's obligations under the Replacement DIP Facility, (iii) pay $23.5 million to the holders of general unsecured claims of the Company in accordance with the Plan and (iv) pay all other allowed claims required to be paid pursuant to the Plan (collectively, the "**Cash Purchase Price**") payable as set forth below in Section 1.03, plus (b) the contribution to the Company of the amount owed under the Prepetition Credit Agreement (the "**Prepetition Credit Agreement Contribution**" and, together with the Cash Purchase Price, the "**Purchase Price**"). Following such contribution of the amounts owed under the Prepetition Credit Agreement, none of the Debtors or any of their Affiliates party thereto shall have any further obligations under the Prepetition Credit Agreement. |

[7] Capitalized terms used in the following chart but not otherwise defined herein shall have the meanings ascribed to such terms in the Investment Agreement. This statement is qualified in its entirety by reference to the provisions of the Investment Agreement. To the extent of any inconsistency between this chart and the Investment Agreement, the Investment Agreement shall govern.

| **Transactions To Be Effected at the Closing** | |
|---|---|
| **Investment Agreement § 1.03** | (a) The Reorganized Company will deliver to Investor or one of its wholly owned Subsidiaries (as determined by Investor in its sole discretion) (i) certificates representing the Shares, duly issued by the Reorganized Company and registered in the name of Investor and (ii) the Reorganized Company's Closing Certificate (as defined in Section 5.02(b)).<br>(b) Investor shall deliver to the Reorganized Company (i) the Cash Purchase Price by wire transfer of immediately available funds to the account designated by the Company (which account shall be designated by the Company not less than one day prior to the Closing Date) and (ii) evidence reasonably satisfactory to the Parties that all debt under the Prepetition Credit Agreement has been satisfied. |

| **No Solicitation** | |
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| **Investment Agreement § 4.02** | During the period following the entry of the Investment Agreement Approval Order by the Bankruptcy Court through the Closing (or such earlier date in the event the Investment Agreement is terminated in accordance with its terms), the Company will not, nor will it authorize or permit any Company Subsidiary to, nor will it authorize or permit any officer, director or employee of, or authorize any investment banker, attorney or other advisor, agent or representative (collectively, "**Representatives**") of, the Company or any Company Subsidiary to, and will instruct the Representatives, the Company and any Company Subsidiary not to and will otherwise use its commercially reasonable efforts to cause the Representatives, the Company and any Company Subsidiary not to, (i) directly or indirectly solicit or initiate any Alternative Proposal or (ii) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any person any non-public information with respect to, or take any other action to knowingly facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Alternative Proposal; provided, however, that, if the Company has not breached its obligations under this Section 4.02(a) and in the good faith determination of the Company Board, after consultation with its outside legal counsel and its financial advisors that the failure to take such action would be inconsistent with its fiduciary duties under applicable law, prior to the entry of the Confirmation Order by the Bankruptcy Court, the Company may, in response to an unsolicited bona fide written Alternative Proposal, or other unsolicited bona fide written proposal that could, in the good faith determination of the Company Board, after consultation with its financial advisors, reasonably be expected to lead to a Superior Proposal, that did not result from a breach of this Section 4.02(a), (x) furnish information with respect to the Company and the Company Subsidiaries to the person making such Alternative Proposal and its Representatives pursuant to a customary confidentiality agreement and (y) participate in discussions or negotiations regarding such Alternative Proposal with the person making such Alternative Proposal and its Representatives; provided further that nothing herein shall limit the Company's ability to make filings with the Bankruptcy Court in connection with the Chapter 11 Cases. The Company must reasonably promptly provide to Investor any material non-public information concerning the Company or any Company Subsidiary that is provided to such person or its Representatives which was not previously provided to Investor. In no event shall any refinancing or repayment of, or attempt to refinance or repay, the Replacement DIP Facility in cash and in full or the Prepetition Credit Agreement be deemed a breach of this Section 4.02 or other provision of the Investment Agreement or the Replacement DIP Facility. |

| **Antitrust Clearance and FCC Approval** | |
|---|---|
| **Investment Agreement § 4.04** | Each of Investor and the Company will use reasonable best efforts to obtain antitrust clearance and FCC approval. For purposes of this provision, this requirement shall include the following obligations. Each of Investor and the Company will, (a) within 15 days following the entry by the Bankruptcy Court of the Investment Agreement Approval Order, file with the United States Federal Trade Commission and the United States Department of Justice (together, the "**Antitrust Agencies**") the notification and report form, if any, required to be filed by them for the Transaction and the other transactions contemplated hereby pursuant to the HSR Act and (b) within the earlier of (i) two business days following the entry of the Confirmation Order or 21 calendar days following the date of the Investment Agreement, file all notices, applications and requests for FCC Approval required to be filed with the FCC. |

| **Bankruptcy Matters** | |
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| **Investment Agreement § 4.12** | (a) Promptly following execution of the Investment Agreement (but in no event later than 48 hours thereafter), the Company will file with the Bankruptcy Court motions in form and substance reasonably satisfactory to Investor (collectively, the "**Approval Motions**"), seeking entry of orders by the Bankruptcy Court, respectively, approving the Investment Agreement and the Replacement DIP Facility pursuant to terms contemplated by the DIP Commitment Letter. Among other things, the Approval Motions will seek approval of the execution by the Debtors of the Investment Agreement and of the DIP Commitment Letter and the "DIP Loan Documents" referred to therein and authorization for the Debtors to incur and perform their obligations thereunder and hereunder and to execute such other documentation as may be required with respect to the transactions contemplated by such agreements.<br>(b) For purposes of the Investment Agreement:<br>(i) "**Investment Agreement Approval Order**" means an order entered by the Bankruptcy Court approving the Investment Agreement and authorizing the Company to enter into the Investment Agreement, in the form attached hereto as Exhibit A.<br>(ii) "**DIP Financing Approval Order**" means an order entered by the Bankruptcy Court approving the Replacement DIP Facility and authorizing the Debtors to execute, deliver and perform their obligations under the "DIP Loan Documents" referred to in the DIP Commitment Letter.<br>(c) Prior to February 28, 2011, the Debtors will file in the Chapter 11 Cases (i) the Plan, which Plan will contain the terms contained in the Plan Term Sheet, will not contain terms that are inconsistent with those set forth in the Plan Term Sheet and will otherwise be in form and substance satisfactory to Investor and (ii) the Disclosure Statement. The Debtors will not amend, supplement or otherwise modify any provision of the Plan or the Disclosure Statement (each as filed with the Bankruptcy Court) without the prior consent of Investor which will not be unreasonably withheld. |

| **Conditions to Each Party's Obligation** | |
|---|---|
| **Investment Agreement § 5.01** | The obligations of Investor and the Company to effect the Transaction are subject to the satisfaction (or waiver by Investor and the Company) on or prior to the Closing of the following conditions:<br>(a) Confirmation Order. The Bankruptcy Court shall have entered an order in the Chapter 11 Cases confirming the Plan in form and substance not inconsistent with the provisions of the Plan Term Sheet or the Investment Agreement and which order shall be otherwise in form and substance reasonably satisfactory to Investor (the "**Confirmation Order**").<br>(b) No Injunctions or Restraints. No restraining order, preliminary or permanent injunction or other judgment, decree, ruling or order issued by any court of competent jurisdiction or Law, other legal restraint or prohibition (collectively, "**Restraints**") shall be in effect preventing the consummation of the Transaction, the Restructuring or the other transactions contemplated hereby.<br>(c) HSR Waiting Period. Any waiting period under the HSR Act applicable to the Transaction shall have expired or been terminated.<br>(d) FCC Consents. (1) The FCC Consents shall have been obtained and shall be final and in full force and effect without any Unacceptable Condition; (2) the FCC shall not have reconsidered the decision or order approving the transfer of control to Investor over the FCC authorizations held by the Company or by the licensee of each Company License (the "**FCC Order**") on its own motion within thirty (30) days of release of the FCC Order or if the FCC Order has been released by a bureau or bureaus, or division or subdivision thereof, forty (40) days from its release; and (3) the FCC and the applicable courts having jurisdiction over the matter shall have denied all petitions for reconsideration and applications for review and appeals (collectively, "**Appeals**") of the FCC Order (or of an FCC or court order affirming the FCC Order), or the periods for filing such Appeals shall have passed and no Appeal shall have been filed; provided that, Investor shall have the right, in its sole and absolute discretion, to waive this condition if the FCC Consents shall have been obtained, despite the pendency of one or more Appeals. |

| **Termination** | |
|---|---|
| **Investment Agreement § 6.01** | (a) Notwithstanding anything to the contrary in the Investment Agreement, the Investment Agreement may be terminated at any time prior to the Closing:<br>(i) by mutual written Consent of the Company and Investor;<br>(ii) by the Company or Investor after delivery of, but not later than the 10th business day after delivery of, a Condition Failure Notice by Investor;<br>(iii) by either Party upon material breach by the other Party of any of their respective representations, warranties, covenants or agreements made herein which (x) (A) would give rise to a failure of a condition to the terminating Party's obligation hereunder, and (B) cannot be cured by the breaching Party prior to the date of termination or (y) if capable of being cured, shall not have been cured (1) within 15 calendar days following receipt of written notice from the terminating Party of such breach or (2) any shorter period of time that remains between the date the terminating Party provides written notice of such breach and the End Date; provided that the terminating Party shall not have the right to terminate the Investment Agreement pursuant to this Section 6.01(a)(iii) if it is then in material breach of any of its representations, warranties, covenants or other agreements hereunder and such breach would give rise to the failure of a condition to the obligation of the other Party.<br>(iv) by the Company in connection with an unsolicited bona fide written Alternative Proposal that did not result from a breach of Section 4.02(a) and with terms that the Company Board determines in good faith, after having consulted with its outside legal counsel and its independent financial advisors, to be a Superior Proposal; provided, however, that prior to notifying Investor of the termination of the Investment Agreement pursuant to this Section 6.01(a)(iv), (x) the Company shall have given Investor written notice of the terms of such Alternative Proposal (including the identity of the person making such Alternative Proposal) and of the good faith determination by the |

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| | Company Board, after consultation with its outside legal counsel and its financial advisors that the failure to take such action would be inconsistent with its fiduciary duties under applicable law, that such Alternative Proposal constitutes a Superior Proposal and (y) at least five business days after Investor has received the notice referred to in clause (x) above, and taking into account any revised proposal made by Investor since receipt of the notice referred to in clause (x) above, the Company Board again has determined in good faith, after consultation with its outside legal counsel and its independent financial advisors, that such Alternative Proposal remains a Superior Proposal; or<br>(v) by either Party, if the Closing does not occur on or prior to December 31, 2011 (the "**End Date**"); provided that the "End Date" shall instead be March 31, 2012 if all of the conditions set forth in Sections 5.01 and 5.02 have been satisfied or waived in writing as of December 31, 2011 (or, if the Closing were to have taken place on such date, such conditions would have been satisfied, other than conditions by their nature or their terms to be satisfied at the Closing) other than any of the conditions set forth in Section 5.01(c), Section 5.01(d) or Section 5.02(c); provided that a Party shall not have a right to terminate the Investment Agreement pursuant to this Section 6.01(a)(v) if such Party has breached in any material respect any of its obligations under the Investment Agreement in any manner that has been a principal cause of or resulted in the failure to consummate the transactions contemplated hereby.<br>(b) Any termination of the Investment Agreement pursuant to any of Sections 6.01(a)(ii), (iii), (iv) or (v) shall be by written notice thereof given to the other Party and, upon delivery of such notice or, in the case of a termination pursuant to Section 6.01(a)(i), upon such mutual written consent, the Investment Agreement will be terminated without further action by any Party. |

| **Break-Up Fee** | |
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| **Investment Agreement § 6.02(c)** | If the Investment Agreement is terminated by the Company pursuant to Section 6.01(a)(iv) after the entry of the Investment Agreement Approval Order, the Company shall pay Investor a fee of $25 million (the "**Break-Up Fee**") in cash by wire transfer (to an account designated in writing by Investor) either (i) two (2) business days following the consummation of the Superior Proposal pursuant to which the Investment Agreement was terminated or (ii) if such Superior Proposal is terminated or abandoned, thirty (30) days following the termination of the Superior Proposal pursuant to which the Investment Agreement was terminated (the "**Break-Up Fee Payment Date**"), provided that, Investor's claim for the Break-Up Fee shall be deemed to have been incurred and shall accrue upon the date of termination of the Investment Agreement pursuant to a Superior Proposal by the Company. The Break-Up Fee, payable under the circumstances provided in the preceding sentence, and the Investor Transaction Expenses, payable under Section 6.02(c), constitute liquidated damages and not a penalty and are, notwithstanding anything herein to the contrary, the exclusive remedy of Investor and its Affiliates after any termination of the Investment Agreement pursuant to Section 6.01(a)(iv), other than any remedies available to Investor for a willful and material breach of the Investment Agreement by the Company. Investor shall not, and shall cause each of its Related Persons not to, bring any cause of action (other than for a willful and material breach of the Investment Agreement by the Company) against or otherwise seek remedies from, the Company or any Company Affiliate or any of their respective Related Persons or any counterparty to an Alternative Transaction or any of such counterparty's Affiliates or its other their Related Persons (other than for payment of the applicable Break-Up Fee when payable hereunder), whether at equity or in law, for breach of contract, in tort or otherwise, in the event that the Investment Agreement is terminated for any reason in accordance with Section 6.01(a)(iv), and any claim, right or cause of action by Investor or any other person against the Company, any Company Subsidiary, their Affiliates or its of their respective Related Persons in excess of the applicable Break-Up Fee is hereby fully waived, released and forever discharged. |

| **Reverse Break-Up Fee** | |
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| **Investment Agreement § 6.02(e)** | If there is a Reverse Break Fee Termination, Investor shall pay to the Company a fee of $25 million (the "**Reverse Break-Up Fee**"). The Reverse Break-Up Fee, payable under the circumstances provided in this paragraph, constitutes liquidated damages and not a penalty and is, notwithstanding anything herein to the contrary, the exclusive remedy of the Company, its Affiliates and its Related Persons after any Reverse Break Fee Termination. The Company shall not, and shall cause each of its Related Persons not to, bring any cause of action (including for a willful and material breach of the Investment Agreement by Investor) against or otherwise seek remedies from, Investor or any Affiliate of Investor or any of their respective Related Persons, whether at equity or in law, for breach of contract, in tort or otherwise, in the event that the Investment Agreement is terminated for any reason in accordance with a Reverse Break Fee Termination, and any claim, right or cause of action by the Company or any other person against Investor, its Affiliates or their respective Related Persons in excess of the applicable Reverse Break-Up Fee is hereby fully waived, released and forever discharged. When used herein, a "Reverse Break Fee Termination" means a termination<br>(i) by either Party pursuant to Section 6.01(a)(v) if at the time of such termination (1) all of the conditions set forth in Sections 5.01 and 5.02 (other than those conditions that by their nature or their terms are to be satisfied only at the Closing and the conditions set forth in Section 5.01(c), Section 5.01(d) and Section 5.02(c)) have been satisfied or waived in writing as of such termination, (2) those conditions set forth in Sections 5.01 and 5.02 that by their nature or their terms are to be satisfied only at the Closing (not including, for the avoidance of doubt, those set forth in Section 5.01(c), Section 5.01(d) and Section 5.02(c)) would have been satisfied had the Closing taken place on such termination date, and (3) any of the conditions set forth in Section 5.01(c), Section 5.01(d) or Section 5.02(c) have neither been satisfied nor waived in writing; or<br>(ii) by the Company pursuant to Section 6.01(a)(iii) if at the time of such termination (1) all of the conditions set forth in Sections 5.01 and 5.02 (other than those conditions that by their nature or their terms are to be satisfied only at the Closing ) and (2) those conditions set forth in Sections 5.01 and 5.02 that by their nature or their terms are to be satisfied only at the Closing would have been satisfied had the Closing taken place on such termination date, except in each case as the failure of a condition results from the material breach by Investor pursuant to which the Company is terminating the Investment Agreement. |

| **Specific Performance** | |
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| **Investment Agreement § 7.09** | The Parties hereto hereby agree that irreparable damage would occur in the event that any provision of the Investment Agreement was not performed in accordance with its specific terms or was otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the parties hereto acknowledge and hereby agree that in the event of any breach or threatened breach by the Company, on the one hand, or Investor, on the other hand, of any of their respective covenants or obligations set forth in the Investment Agreement, the Company, on the one hand, and Investor, on the other hand, shall, in addition to any other remedies which may be available to them, be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of the Investment Agreement by the other (as applicable), and to specifically enforce the terms and provisions of the Investment Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other under the Investment Agreement, in all cases without any requirement to post any bond in connection therewith. The Company, on the one hand, and Investor, on the other hand, hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of the Investment Agreement by the Company, on the one hand, or Investor, on the other hand. |

## Relief Requested

20. By this Motion, the Debtors respectfully request entry of an order authorizing and approving the Debtors' entry into the Investment Agreement.

## Basis for Relief

21. Section 363 of the Bankruptcy Code provides that a debtor in possession may "use . . . property of the estate" outside the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1). While section 363 does not indicate a standard to be used in determining whether a debtor's use of estate property is appropriate, courts routinely authorize a debtor's use of property outside the ordinary course if such use is based upon the sound business judgment of the debtor. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (explaining that business judgment rule requires that a sound business purpose for the transaction exist); Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that courts usually defer to trustee's judgment as long as there is "legitimate business purpose").

22. Once a debtor has articulated a valid business justification under section 363 of the Bankruptcy Code, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and with the honest belief that the action was in the best interest of the estate. See Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)); see also Bridgeport Holdings, Inc. Liquidating Trust v. Boyer (In re Bridgeport Holdings, Inc.), 388 B.R. 548, 567 (Bankr. D. Del. 2008). Further, once "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." Comm. of Asbestos-Related Litigants v. Johns-Manville Corp., (In re Johns-Manville Corp.), 60 B.R. 612,

616 (Bankr. S.D.N.Y. 1986). The business judgment rule is ubiquitous in chapter 11 cases and shields a debtor's management from judicial second-guessing. See Integrated Res., 147 B.R. at 656; Johns-Manville, 60 B.R. at 615-16 ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions."). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

23. The significant investment by DISH pursuant to the Investment Agreement will maximize the value of the Debtors' estates. The Investment Agreement is the product of good faith and arm's-length negotiations between the Debtors and DISH. Obtaining the Court's approval of the Investment Agreement is a necessary step to enable the Debtors to confirm and consummate the Alternate Plan. Notably, under the Alternate Plan, the Senior Noteholders will be paid in full, and the unsecured creditors will receive a meaningful cash recovery (as opposed to a minority equity stake in a private company). As a result, the decision to seek approval of the Investment Agreement and prosecuting the confirmation of the Alternate Plan is a product of the Debtors' sound business judgment.

24. Further, to the extent the Debtors receive a proposal that the Debtors determine, in good faith and in consultation with their advisors, to be even better than the Alternate Plan, the Investment Agreement permits the Debtors to pursue such proposal. This ensures that the Investment Agreement will not prevent the Debtors from exercising the fiduciary duties owed to their stakeholders in the event that a more favorable opportunity presents itself. Accordingly, the Debtors have determined in their business judgment that the relief requested herein is in the best interests of their estates and their creditors.

## Debtors' Reservation of Rights

25. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

## Notice

26. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the official committee of unsecured creditors; (c) counsel to DISH; (d) counsel to the ad hoc committee of Senior Noteholders; (e) all known Senior Noteholders; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; and (h) the parties in interest who have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Rules. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

## No Prior Request

27. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to enter into the Investment Agreement, (b) approving the terms of the Investment Agreement without limitation, and (c) granting such other further relief as is just and proper.

New York, New York
Dated: February 1, 2011

/s/ *Ryan Blaine Bennett*

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